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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 130212129-3474-02]

RIN 0648-BC98

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;  
Reef Fish Fishery of the Gulf of Mexico; Red Snapper Management  
Measures

AGENCY: National Marine Fisheries Service (NMFS), National  
Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement management measures described in a framework action to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) prepared by the Gulf of Mexico Fishery Management Council (Council). This rule revises the commercial and recreational quotas for red snapper in the Gulf of Mexico (Gulf) reef fish fishery for the 2013 fishing year and announces the quota closure dates in the exclusive economic zone (EEZ) off each Gulf state for the 2013 red snapper recreational fishing season. This final rule is intended to help achieve optimum yield for the Gulf red snapper resource without increasing the

risk of red snapper experiencing overfishing.

DATES: This rule is effective [insert date of publication in the FEDERAL REGISTER].

ADDRESSES: Electronic copies of the framework action, which includes an environmental assessment and a regulatory impact review, may be obtained from the Southeast Regional Office Web Site at

<http://sero.nmfs.noaa.gov/sf/GrouperSnapperandReefFish.htm>.

FOR FURTHER INFORMATION CONTACT: Cynthia Meyer, Southeast Regional Office, NMFS, telephone 727-824-5305; email: [Cynthia.Meyer@noaa.gov](mailto:Cynthia.Meyer@noaa.gov).

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the Gulf reef fish fishery under the FMP. The Council prepared the FMP and NMFS implements the FMP through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On April 4, 2013, NMFS published a proposed rule for the framework action and requested public comment (78 FR 20292). The proposed rule and the framework action outline the rationale for the actions contained in this final rule. A summary of the actions implemented by this final rule is provided below.

Through this final rule, NMFS sets the 2013 commercial quota at 4.315 million lb (1.957 million kg), round weight, and

the 2013 recreational quota at 4.145 million lb (1.880 million kg), round weight. NMFS also sets the 2013 red snapper recreational fishing season for Gulf Federal waters through this final rule.

Under 50 CFR 622.34(b), the red snapper recreational fishing season opens each year on June 1 and closes when the recreational quota is projected to be reached. The bag limit for red snapper in Gulf exclusive economic zone (EEZ) is 2 fish, as specified in 50 CFR 622.38(b)(3). On March 25, 2013, NMFS implemented an emergency rule to authorize NMFS to set the closure date of the red snapper recreational fishing season in the EEZ off individual states (78 FR 17882). The closure dates off each Gulf state in that emergency rule were based on the recreational quota revision contained in this final rule and any state's inconsistent regulations. For 2013, Texas established a year-round season with a 4-fish bag limit, Louisiana established an 88-day season with a 3-fish bag limit, and Florida established a 44-day season with a 2-fish bag limit. Mississippi and Alabama did not implement inconsistent regulations in their state waters.

On May 7, 2013, the NMFS Southeast Fisheries Science Center provided the NMFS Southeast Regional Office with updated landings data for monitoring quotas and annual catch limits

using data from the Marine Recreational Information Program (MRIP). These landings data included 2012 landings converted from the Marine Recreational Fisheries Statistics Survey Program (MRFSS) to MRIP. Prior to May 7, 2013, these data were not available for use in NMFS Southeast Regional Office's calculations, so MRFSS landings data were used to calculate the season lengths identified in the proposed rule. Because the new data are now available, NMFS re-calculated the projected 2013 red snapper recreational season lengths off each Gulf state using the 2012 landings data from MRIP instead of from MRFSS.

NMFS now uses MRIP to monitor landings and is considered to be the best scientific information available, consistent with National Standard 2 of the Magnuson-Stevens Act. National Standard 2 states that "conservation and management measures shall be based upon the best scientific information available." MRIP has slowly been integrated into NMFS's recreational data monitoring program and has now replaced MRFSS completely.

In addition to using MRIP data, new information from Louisiana and Texas was used to calculate the red snapper recreational season closure dates. Louisiana provided in-season catch estimates from their quota monitoring program and Texas provided final landings for 2012. The previous closure estimates were based on projected Texas landings for 2012. This

re-calculation of the red snapper recreational seasons results in additional fishing days for all 5 Gulf States compared to the tentative red snapper recreational seasons previously discussed in the proposed rule. Based on the regulations established by Texas, Louisiana, and Florida; landings data from MRIP; the new information provided by Louisiana and Texas; and the recreational quota being set by this rulemaking, the closure dates for the EEZ off each state, effective at 12:01 a.m., local time, are set as follows: Texas, June 18, 2013; Louisiana, June 25, 2013; Mississippi, July 5, 2013; Alabama, July 5, 2013; and Florida, June 27, 2013.

To determine these closure dates, NMFS analyzed the catch rates for each state. The method for calculating these dates can be found in SERO-LAPP-2013-02 at [http://sero.nmfs.noaa.gov/sustainable\\_fisheries/gulf\\_fisheries/red\\_snapper/documents/pdfs/2013\\_red\\_snapper\\_emergency\\_regs.pdf](http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/red_snapper/documents/pdfs/2013_red_snapper_emergency_regs.pdf).

The amount each state's Federal season is shortened is contingent on estimates of landings when the Federal season is closed. The more a state exceeds its apportionment of the annual recreational quota, the more the Federal recreational season must be reduced in the Federal waters off that state to compensate for the overage. NMFS estimates catch rates on the order of 1.5 to 3 times greater than the current state water

catch rates due to factors such as increasing catch rates and fish size, higher bag limits, weekend fishing, peak season fishing, increases in stock abundance, potentially significant levels of deliberate or accidental non-compliance by constituents with state/Federal boundaries during incompatible regulatory periods, and the fact that some for-hire vessels are not

federally permitted and contribute to landings when the Federal season is closed. For the season projections, NMFS used 2 times the catch rate because using 1.5 times the catch rate would potentially be an underestimate and using 3 times the catch rate could be too conservative.

#### Comments and Responses

During the comment period, NMFS received 43 comments, including 36 from private citizens, 2 from recreational fishing organizations, 3 from a commercial fishing organization and 2

from environmental groups. Comments pertinent to the rule unanimously supported increasing the red snapper quota and did not raise any additional issues within the scope of this rulemaking. NMFS agrees with the commenters that the quota increases are appropriate actions, and are in accordance with the red snapper rebuilding plan.

Many of these same commenters provided additional observations and suggestions for alternative strategies to manage the recreational red snapper harvest, including changes to the bag limit and size limits, slot limits, alternative seasons, regional management, separate allocations for private anglers and the for-hire fleet, and reallocation of the quotas between the recreational and commercial sector. The Council has considered many of the suggested options in the past, and continues to consider alternative management options for the recreational harvest of red snapper. NMFS agrees that alternative recreational management strategies may prove to be viable options for the management of red snapper in the future; however, these comments and suggestions are beyond the scope of this rulemaking to increase the commercial and recreational quotas for red snapper for the 2013 fishing year, and thus will not be further addressed in this rule.

Changes from the Proposed Rule

On April 17, 2013, NMFS published in the Federal Register an interim final rule to reorganize the regulations in 50 CFR part 622 for the Gulf of Mexico, South Atlantic, and the Caribbean (78 FR 22950). That interim final rule did not create any new rights or obligations; it reorganized the existing regulatory requirements in the Code of Federal Regulations into a new format. This final rule incorporates this new format into the regulatory text. Therefore, the commercial and recreational quotas for red snapper previously located in the regulatory text at § 622.42(a)(1)(i) and (a)(2)(i), respectively, are now located at § 622.39(a)(1)(i) and (a)(2)(i), respectively.

#### Classification

The Regional Administrator, Southeast Region, NMFS determined that this final rule and the framework action are necessary for the conservation and management of the Gulf reef fish fishery and are consistent with the Magnuson-Stevens Act and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage



that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination was published in the proposed rule and is not repeated here. No comments were received regarding the certification and NMFS has not received any new information that would affect its determination. As a result, a regulatory flexibility analysis was not required and none was prepared.

The NOAA Assistant Administrator for Fisheries (AA) finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness of the management measures contained in this final rule. A 30-day delay in effectiveness of the final rule is impracticable because the recreational fishing season for red snapper begins on June 1, and therefore, there is not enough time for NMFS to provide both notice and comment on the proposed rule and a 30-day delay in effectiveness on the final rule, before the season starts. This final rule implements increased commercial and recreational quotas for Gulf red snapper based on the increase in the acceptable biological catch (ABC) from 8.08 million lb (3.67 million kg) to 8.46 million lb (3.83 million kg), round weight, as recommended by the Council's Science and Statistical Committee (SSC). The SSC met in November 2012 to review new scientific information and recommended an increased ABC for 2013. At its February 2013 Council meeting, the Council

voted to implement commercial and recreational quota increases in 2013 based on the ABC recommended by the SSC. Increased quotas will allow additional harvest of red snapper and will provide the opportunity for the fishery to achieve optimum yield. Additionally, NMFS received new scientific information on May 7, 2013, to use to update and extend the red snapper recreational seasons. The new data included 2012 landings converted from MRFSS to MRIP. Prior to May 7, 2013, these data were not available, so MRFSS landings data were used to calculate the season lengths identified in the proposed rule.

Because the new data are now available, NMFS re-calculated the projected 2013 red snapper recreational season lengths off each Gulf state using the 2012 landings data from MRIP instead of from MRFSS, which is the best scientific information now available. Because the recreational fishing season begins on June 1, there isn't enough time for NMFS to provide both notice and comment on the proposed rule and a 30-day delay in effectiveness on the final rule. Therefore, NMFS provided the opportunity for notice and comment on the proposed rule, but is waiving the 30-day delay in effectiveness on this final rule.

In addition, a 30-day delay in effectiveness of this final rule would be contrary to the public interest. If this rule is not effective immediately, and the recreational fishing season

closure dates cannot be implemented immediately, the recreational ACL could be exceeded and overfishing of the red snapper resource could occur. The recreational closure date off Texas has been set for 12:01 a.m., local time, June 18, 2013; the recreational closure date off Louisiana has been set for 12:01 a.m., local time, June 25, 2013; and the recreational closure date off Florida has been set for 12:01 a.m., local time, June 27, 2013. If this rule were effective 30 days after publication, these closure dates could not be implemented and recreational fishing off these states would continue to occur. Additional fishing off these states could lead to the recreational ACL being exceeded which could lead to an overfishing situation. This would be in violation of National Standard 1 of the Magnuson-Stevens Act. National Standard 1 states that "management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery..." The red snapper stock is still overfished and under a rebuilding plan through 2032. The next SEDAR benchmark stock assessment is currently undergoing. To keep red snapper on the rebuilding plan and prevent overfishing from occurring, this rule needs to take effect immediately.

For these reasons, the AA waives the 30-day delay in effectiveness of this final rule.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Gulf of Mexico, Red Snapper.

Dated: May 23, 2013.

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Alan D. Risenhoover, Director, Office of Sustainable Fisheries,  
performing the functions and duties of the Deputy Assistant Administrator  
for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622  
is amended as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read

as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 622.39, paragraphs (a)(1)(i) and (a)(2)(i) are revised to read as follows:

§ 622.39 Quotas.

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(a) \* \* \*

(1) \* \* \*

(i) Red snapper--4.315 million lb (1.957 million kg), round weight.

(2) \* \* \*

(i) Recreational quota for red snapper--4.145 million lb (1.880 million kg), round weight.

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